

Gary A. Stewart, a Sole Proprietor, d/b/a Stewart Management and Nelson Richardson. Case 5-CA-21336

March 16, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by Nelson Richardson, the Charging Party, on July 13, 1990, and amended on October 11, 1990, the General Counsel of the National Labor Relations Board issued a complaint on October 22, 1990, against Gary A. Stewart, a Sole Proprietor, d/b/a Stewart Management, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. On November 2, 1990, the Respondent filed an answer to the complaint, admitting and denying certain allegations, and raising affirmative defenses.

On May 31, 1991, the Regional Director for Region 5 approved a settlement agreement in this proceeding executed on NLRB Form-4775. Form-4775 provides, *inter alia*, that "[a]pproval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response." The settlement agreement required the Respondent to make payments to six alleged discriminatees in three installments. The first installment was paid as agreed on May 15, 1991. The Respondent thereafter failed to comply with the terms of the settlement agreement despite several requests (by telephone and letter) to do so by counsel for the General Counsel to counsel for the Respondent.

On November 6, 1991, the Regional Director issued an amended complaint and notice of hearing alleging the violations of Section 8(a)(1) as set forth in the original complaint, further alleging the Respondent's failure to comply with the terms of the settlement agreement, and setting aside the settlement agreement. The Respondent did not file an answer.

On January 16, 1992, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On January 23, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended complaint stated that unless an answer was filed by December 11, 1991, "all of the allegations in the amended complaint shall be deemed to be admitted true and shall be so found by the Board."

Further, the undisputed allegations in the Motion for Summary Judgment disclose that on December 30, 1991, the date by which the Respondent was to have filed an answer, the Respondent spoke with counsel for the General Counsel and acknowledged receipt of the amended complaint and notice of hearing and order setting hearing date.¹ Counsel for the General Counsel explained the Respondent's obligation to file an answer and the consequences of failure to file. The Respondent said that it would file an answer and was given an additional extension of time to file an answer to close of business January 6, 1992. A letter confirming the conversation was sent by certified mail and regular mail to the Respondent on December 30, 1991. No answer has been filed.²

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent has at all times material been owned by Gary A. Stewart, a Sole Proprietor,

¹ The Respondent's copy of the amended complaint and notice of hearing were mailed to an address from which the Respondent had moved and were returned to Region 5. The Region attempted reservice by certified mail upon the Respondent at the correct address. The documents were returned unclaimed as was the Respondent's copy of the order setting hearing date. Thereafter, on December 18, 1991, a field attorney from Region 5 personally served the Respondent with the amended complaint and notice of hearing and order setting hearing date, and cover letter by delivering those documents to the Respondent's residence.

² Consistent with the settlement agreement signed on NLRB Form-4775 by the Respondent, any answer previously filed by the Respondent was withdrawn. The withdrawal of any answer necessarily has the same effect as if the Respondent had failed to file an answer. See *Newark Pipeline Co.*, 202 NLRB 234 (1973); *Nickey Chevrolet Sales*, 199 NLRB 411 (1972). Additionally the Board has found that an answer to an original complaint is not revived where: (1) the parties subsequently enter a settlement agreement; (2) the settlement agreement is breached; (3) the original complaint allegations are renewed in a consolidated complaint; and (4) no timely answer is filed to a consolidated complaint. See *Orange Data, Inc.*, 274 NLRB 1018 (1985); *Protection Sprinkler Systems*, 295 NLRB No. 122 (July 31, 1989). Cf. *West Fork Energy*, 305 NLRB No. 127 (Dec. 18, 1991) (an answer to an original complaint survived a breached non-Board settlement that made no reference to previously filed answers being withdrawn).

doing business and trading under the name of Stewart Management. The Respondent has an office in Largo, Maryland, and performs janitorial services. During the calendar year ending December 31, 1989, the Respondent in the course and conduct of its business operations provided services valued in excess of \$50,000 for National Semiconductor Corporation, an enterprise within the State of Maryland. National Semiconductor Corporation, a nationwide corporation, has been engaged in the manufacture and nonretail sale of electronic components to companies located outside the State of Maryland. During the calendar year ending December 1, 1989, National Semiconductor Corporation, in the course and conduct of its interstate operations, derived gross revenues in excess of \$50,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About July 13, 1990, Shirley Hammond, Sandra Julian, Cynthia Belt, Nelson Richardson, May Lunn, and Jesse Bulware, and other employees of the Respondent, ceased work concertedly and engaged in a work stoppage in protest of the Respondent's failure to pay wages in a timely fashion. These same employees also concertedly approached an employee of National Semiconductor Corporation to ascertain the reason for, and to express their concern over, not being paid their wages. About July 13, 1990, the Respondent discharged the above-named employees. The Respondent discharged the employees in order to discourage them from engaging in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We find that by discharging these employees, the Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

By discharging its employees, Shirley Hammond, Sandra Julian, Cynthia Belt, Nelson Richardson, May Lunn, and Jesse Bulware, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully discharged employees Shirley Hammond, Sandra

Julian, Cynthia Belt, Nelson Richardson, May Lunn, and Jesse Bulware, we shall order the Respondent to offer them immediate and full reinstatement and make them whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to remove from its files any references to the discharges of these employees and notify them in writing that this has been done and that evidence of the discharges will not be used as a basis for future personnel action against them.

ORDER

The National Labor Relations Board orders that the Respondent, Gary Stewart, a Sole Proprietor, d/b/a Stewart Management, Ft. Meade, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees or otherwise disciplining employees because they engage in a protected strike, work stoppage, or other concerted activity for their mutual aid or protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Shirley Hammond, Sandra Julian, Cynthia Belt, Nelson Richardson, May Lunn, and Jesse Bulware full and immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole, with interest, for any loss of earnings and other benefits they may have suffered because of their discharges, as set forth in the remedy section of this decision.

(b) Remove from its files any references to the discharges of the above-named employees and notify them in writing that this has been done and that evidence of those discharges will not be used as a basis for future action against them.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payments due under the terms of this Order.

(d) Post at its Largo, Maryland facility copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discipline employees because they engage in a protected strike, work stoppage, or other concerted activity for their mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer to Shirley Hammond, Sandra Julian, Cynthia Belt, Nelson Richardson, May Lunn, and Jesse Bulware full and immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges.

WE WILL make the above-named employees whole for any loss of earnings and other benefits they may have suffered because of their discharges, plus interest.

WE WILL remove from our files any references to the discharges of the employees named above, and WE WILL notify them in writing that this has been done and that evidence of those discharges will not be used as a basis for future action against them.

GARY A. STEWART, A SOLE PROPRIETOR,
D/B/A STEWART MANAGEMENT